

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0151
Partnership Income
For 2003

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ISSUES

I. Partnership Income.

Authority: IC 6-8.1-5-1(b).

Taxpayer argues that the Department of Revenue incorrectly attributed to it an amount of additional flow-through income.

II. Ten-Percent Negligence Penalty.

Authority: IC 6-3-6-10(a); IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer argues that the Department of Revenue erred when it assessed a ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business organized as a Limited Liability Company (LLC). Taxpayer files a form IT-65 Partnership Return on an Annual Basis. The Department of Revenue (Department) conducted an investigation of taxpayer's 2002, 2003, and 2004 income during a simultaneous audit of taxpayer's sales tax records. After reviewing taxpayer's business records, the investigation concluded that taxpayer had underreported its gross receipts by approximately \$78,000. Although taxpayer was not directly affected by this conclusion, the investigation stated that, "The LLC's tax assessment will flow-through to the partner's individual income tax."

On behalf of the partners affected, taxpayer challenged the investigation's conclusion. The matter was assigned to a hearing officer, and an administrative hearing was conducted during which taxpayer's representative explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Partnership Income.

After reviewing taxpayer's records, the Department's investigative report indicated that "taxpayer failed to report all of the gross receipts and sales in 2003." The report found that taxpayer had under

reported its gross sales by approximately \$78,000.” Because of the taxpayer’s LLC status, the additional \$78,000 would “flow-through to the partner’s individual income tax.”

Taxpayer protests and states that during the original review of taxpayer’s records, the auditor dealt with taxpayer’s local manager who only had limited accounting background and “the Partnership returns were prepared from a general ledger done at our office and from [taxpayer’s] internal system used by them to do sales tax returns.” In effect, the auditor’s conclusions were based on sales summaries prepared for sales tax returns; taxpayer now maintains that the sales tax summaries were insufficient to determine taxpayer’s gross sales. Taxpayer has now supplied additional information – based on the taxpayers’ general ledger – which presents a purportedly more accurate picture of taxpayer’s income received during 2003.

IC 6-8.1-5-1(b) in part states that, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is wrong.”

Taxpayer has offered substantive documentation which allegedly establishes that the Department’s investigative report overstated its 2003 flow-through income by approximately \$78,000. The Department concludes that the evidence provided is sufficient to warrant review by the audit division and a final determination of whether taxpayer’s 2003 income was overstated.

FINDING

Subject to review and verification by the Audit Division, taxpayer’s protest is sustained.

II. Ten-Percent Negligence Penalty.

Taxpayer argues that imposition of the ten-percent negligence penalty is inappropriate and that the Department should exercise its authority to abate the penalty.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer’s negligence.

Departmental regulation 45 IAC 15-11-2(b) defines negligence as “the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.” Negligence is to “be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.” Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on “reasonable cause and not due to willful neglect.” Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish “reasonable cause,” the taxpayer must demonstrate that it “exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed”

At the time the original investigative report was prepared, taxpayer failed to provide information or explanation adequate for the Department to accurately determine taxpayer’s flow-through income. Taxpayer failed its statutory responsibility to maintain and present for examination records sufficient for the Department to determine the amount of tax due. IC 6-3-6-10(a). Taxpayer’s failure does not

constitute the “reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.” 45 IAC 15-11-2(b).

FINDING

Taxpayer’s protest is respectfully denied.

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